

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 23, 2006

D047224 Cooper v. Torchia

The judgment is affirmed. Parties to bear their own costs on appeal. Haller, J.;
We Concur: Nares, Acting P.J., O'Rourke, J.

D047578 City of San Diego v. Noel

The forfeiture order is affirmed. The parties to bear their own costs on appeal.

D048476 Pallisher Furniture Corp. v. Demarco

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the
remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20(c)(2)).

D048252 People v. Stoll

The judgment is affirmed. McIntyre, J.; We Concur: Nares, Acting P.J., Haller, J.

Court convened at 10:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable
Associate Justices Alex McDonald and Joan Irion
Clerk: D. Moore

D048092) In re Don'Tay C., a Juvenile

D048385) In re Don'Tay C., a Juvenile

D048561) In re David C. et al., Juveniles

Cause called on merits. Patti Dikes, Esq. was present in oral argument for appellant, mother,
Debra C. and waived her opening argument. Valerie Lankford, Esq. was present in oral
argument for appellant, father, Tony C. and waived her opening argument. Robert W. Gehring,
Esq. was present in oral argument for the minor, David C. and waived his opening argument.
Paula Roach, Esq. argued for respondent, County Counsel. Gary S. Plavnick, Esq. argued for
respondent, Neil B. Julie E. Braden, Esq. argued for the minor, Don'Tay C. Ms. Dikes replied.
Ms. Lankford replied. Mr. Gehring replied. Cause submitted.

Court adjourned at 10:40 a.m.

D049323 John Burnham & Company v. Keenan et al.

Respondent John Burnham & Company's motion to dismiss the appeal filed on October 3, 2006,
appellant Chris Keenan's opposition to motion to dismiss filed on October 18, 2006, and
appellant David Mohn's opposition to motion to dismiss appeal filed on October 18, 2006, have
been read and considered by Associate Justices Nares, Haller and McDonald. The appeal is
dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 23, 2006 (Continued)

D048051 In re L.A. et al., Juveniles

The orders are affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., Nares, J.

D048092 In re D.C., a Juvenile

D048385 In re D.C., a Juvenile

D048561 In re David C., a Juvenile

(Consolidated) The judgment and orders are affirmed. Huffman, Acting P.J.;
We Concur: McDonald, J., Irion, J.

D049296 In re Alve on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 24, 2006

D049097 Cecilia C. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied; the request for stay denied. Haller, J.; We Concur: Huffman, Acting P.J., Aaron, J.

D045969 Hol-America, Inc. v. Leisure World Home Resort Products of California et al.

The judgment of the trial court and the trial court's post judgment order regarding attorney fees and interest are affirmed. Each Party shall bear its own costs on appeal. Aaron, J.
We Concur: Nares, Acting P. J., Irion, J.

D049584 Martella v. Superior Court of San Diego County/People

The petition is denied.

D046664 Conservatorship of the Estate of Katz

The judgment is reversed. O'Rourke, J.; We Concur: Nares, Acting P.J., Haller, J.

D045580 People ex rel. Glenn Sabine v. Braun et al.

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting, P.J., Nares, J.

D048673 In re A.C., a Juvenile

The judgment is affirmed. Benke, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

D047415 People v. Haghighi

The judgment is affirmed. McDonald, Acting P.J.; We Concur: Aaron, J., Irion, J.

D047906 In re Daniel R., a Juvenile

The subject probation condition (no. 41) is modified to read as follows: "Minor is not to enter Mexico unless in the immediate custody and control of the parent or legal guardian and with prior Probation Officer permission. Minor shall report circumstances of entry to Mexico to Probation Officer upon his return." As so modified, the dispositional order is affirmed.

CERTIFIED FOR PUBLICATION. Huffman, Acting P.J.; We Concur: McDonald, J., Irion, J.

D045133 XXSYS Technologies, Inc. v. The State of California et al.

The judgment is reversed. XXSYS is entitled to recover its costs on appeal. McDonald, Acting P.J., We Concur: Aaron, J., Irion, J.

D048501 In re Grimes on Habeas Corpus

The petition is denied. McDonald, J.; We Concur: Huffman, Acting P.J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 24, 2006 (Continued)

D047802 Citizens for Preservation of Coronado Beach v. City of Coronado

The judgment is affirmed as modified, with directions to the trial court to issue a modified judgment and writ of mandate directing the City to set aside its resolution certifying the MND and the existing approvals regarding the Services Building; the modified judgment and writ of mandate directing the City to undertake an EIR on the proposed project shall reflect the views expressed in this opinion regarding the inadequacy of the City's previous conclusions that no substantial evidence was presented to raise a fair argument regarding potentially significant environmental impacts on aesthetics and public safety conditions. The trial court's modified judgment shall also be subject to this court's conclusions regarding the adequacy of the existing record on the City's findings of consistency of the proposed project with the LCP, and the adequacy of the existing project definition with respect to segmenting of study. Each party to bear its own costs of appeal. Huffman, J.; We Concur: McConnell, P.J., Irion, J.

D047240 People v. Grimes

The judgment is affirmed. McDonald, J.; We Concur: Huffman, Acting, P. J., Irion, J.

D048035 People v. Pankey

The judgment is affirmed. Aaron, J.; We Concur: McConnell, P.J., Irion, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 25, 2006

D048652 Nickolas F. v. The Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. CERTIFIED FOR PUBLICATION. Aaron, J.; We Concur: McConnell, P.J., Huffman, J.

D047246 People v. Weight

The judgment is affirmed. McConnell, P.J.; We Concur: McDonald, J., Irion, J.

D049099 Rita M. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

Let a writ issue directing the juvenile court to vacate its order finding Rita did not qualify as J.J.'s court designated prospective adoptive parent and authorizing the Agency to remove him from her care and to hold a new hearing regarding Rita's application to be named as his prospective adoptive parent and the Agency's application to remove him from her home. No change of J.J.'s current placement is required pending this hearing. This order is final within ten days as to this court. (Cal. Rules of Court, rule 24(b)(3)).

D049073 People v. Carter

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 30.3).

D047506 Darling v. Barbosa, II

The request for publication of the opinion is denied.

D045987 Foss v. Gorse

This Court's order dated July 13, 2006, submitting the above-entitled cause is VACATED. Within 15 days of the date of this order, Attorney Daniel Winfree is ordered to provide written notice to appellant Richard Foss that he needs to appoint another attorney or appear in person due to the suspension of his attorney, James Miller. (Code Civ. Proc., sec. 286). The notice with an accompanying proof of service must be filed with this Court. The cause is resubmitted this date. (Cal. Rules of Court, rule 23(e)(1)).

D049263 In re Ramirez on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 25, 2006 (Continued)

D048497 People v. William Peter New
D047996 People v. Ramon P. Bartoleno

9:00 a.m. Court convenes

Associate Justice Gilbert Nares designated hearing officer and referee in this matter.

Deputy Clerk: C. Tunnell

Deputy Clerk: D. Moore, recording

CHP Officer: Art Athans

Appointed Counsel Rebecca P. Jones present with Ja' Nal Carter, CSR # 12813.

Jill Amanda Matuk, Senior Deputy Clerk, Court of Appeal present

In re the Matter of Ja' Nal Carter, CSR # 12813, Official Reporter, on Order to Show Cause why sanctions should not be imposed pursuant to rule 46.5 of the California Rules of Court for failure to prepare and file reporter's transcripts in People v. New, D048497 and People v. Bartoleno, D047996.

9:00 a.m. The Court states that progress reports from Superior Court indicate that People v. Bartoleno, case number D047996 has been completed and the augmented record has been filed. Superior Court also reports that People v. New should be completed by November 1, 2006, that Superior Court will check People v. New for completeness on November 2, 2006. The Court continues this hearing to November 3, 2006.

9:01 a.m. Attorney Jones addresses the court. Attorney Jones says that record preparation has moved along so well because Ms. Carter has had the assistance of another court reporter who can read her theory. Attorney Jones says that Ms. Carter has never had this kind of assistance before.

9:02 a.m. The Court states that record preparation has moved along so well because of pressure to complete and certify the record. The Court reminds Ms. Carter that the public, the litigants, the victims and others continue to be affected by this. The court asks attorney Jones if she is available on Friday, November 3, 2006. Ms Jones says she is available.

This hearing is continued to November 3, 2006 at 10:00 a.m. Ms. Carter is ordered to appear at this hearing. Ms. Carter is also ordered to continue to appear daily at the downtown Superior Courthouse to work on this record. The Court asks Ms. Carter if she understands these orders. Ms. Carter says she understands.

9:04 a.m. Court is adjourned

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 26, 2006

D047501 People v. Corona

The judgment is affirmed. Haller, J.; We Concur: Benke, Acting P.J., Nares, J.

D048470 In re B.P., a Juvenile

Judgment affirmed. Nares, Acting P.J.; We Concur: Aaron, J., Irion, J.

D049640 Chambers et al. v. Superior Court of San Diego/The People

The petition is denied.

D048535 In re Riley on Habeas Corpus

The petition is denied.

D049215 In re Cecena on Habeas Corpus

The petition is denied.

D049180 In re Morgan on Habeas Corpus

The petition is denied.

D047369 Graciano v. Robinson Ford Sales, Inc.

The order awarding attorney fees is reversed. Graciano shall recover her costs and attorney fees on appeal. (*Akins v. Enterprise Rent-A-Car Co.*, *supra*, 79 Cal.App.4th at p. 1134 ["Statutory authorization for the recovery of attorney fees incurred at trial necessarily includes attorney fees incurred on appeal unless the statute specifically provides otherwise"]). The matter is remanded to the trial court with directions to conduct a hearing to determine the reasonable amount of attorney fees and costs to be awarded to Graciano in accordance with the principles set forth in this opinion. CERTIFIED FOR PUBLICATION. O'Rourke, J.; We Concur: McConnell, P.J., Benke, J.

D048798 People v. Jones

The judgment is affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

D048487 People v. Dreyer

The judgment is affirmed. Benke, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

D047688 People v. Kollock

The judgment is affirmed. Haller, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 26, 2006 (Continued)

D046248 People v. Meraz

The consecutive sentences on counts 1, 5 and 8 are reversed and the matter is remanded to allow the trial court to consider whether the sentences on counts 1, 5 and 8 should be served consecutively or concurrently. In all other respects the judgment is affirmed. Benke, J.; We Concur: McConnell, P.J., O'Rourke, J.

D049173 People v. Rico

The judgment is affirmed. Benke, J.; We Concur: McConnell, P.J., O'Rourke, J.

D048209 People v. Edlin

The judgment is affirmed. Huffman, J.; We Concur: McConnell, P.J., Benke, J.

D047251 People v. Darling

The conviction on count 2 for violation of section 245, subdivision (b) is reversed. In all other respects, the judgment is affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., Nares, J.

D047902 People v. Pace

The judgment is affirmed. McIntyre, J.; We Concur: McDonald, Acting P.J., O'Rourke, J.

D047412 People v. Gardner

The count 3 conviction for receiving stolen property is reversed and the remaining convictions affirmed. The matter is remanded for resentencing. Huffman, J.; We Concur: McConnell, P.J., McDonald, J.

D048462 In re Jennifer V. et al., Juveniles

The judgments are affirmed. McIntyre, J.; We Concur: McDonald, Acting P.J., Aaron, J.

D049443 Walker v. Superior Court of San Diego County/San Diego Police Department

The Superior Court of San Diego County is ordered to show cause why the relief requested should not be granted. Absent a written objection on or before November 3, 2006, the briefs on file will be deemed the return and reply to the order to show cause.

Absent a written request on or before November 9, 2006, oral argument will be deemed waived.

If a party requests oral argument, the request should be in letter form with proof of service on the other parties. The letter should also identify the focus of the party's argument and the amount of time requested, not to exceed 15 minutes.

The trial in this matter is stayed pending further order of this court.

D047431 Sharp Grossmont Hospital v. Moreno

The judgment is affirmed. Defendant is entitled to his costs on appeal. McIntyre, J.; I Concur: McDonald, J.; I Concur in Part and Dissent in Part: Nares, Acting P.J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 26, 2006 (Continued)

D048842 Rogers et al. v. The Superior Court of San Diego County/Tri-City Healthcare District

The petition is denied. The request for stay is denied.

D049628 In re Graham on Habeas Corpus

The petition is denied.

D049297 In re McNeal on Habeas Corpus

The petition is denied without prejudice as duplicative of the petition filed in case number D049219.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 27, 2006

D048216 People v. Jimenez

The judgment is affirmed. McConnell, P.J.; We Concur: Benke, J., Aaron, J.

D047762 Holly B. v. Glitch

The judgment is affirmed. Glitch is entitled to costs on appeal. McConnell, P.J.;
We Concur: McDonald, J., Irion, J.

D046730 People v. Thomas

The matter is remanded and the trial court directed to strike the Health and Safety Code section 11370.2 enhancements affixed to counts 3, 6, and 7 and to impose the two consecutive Health and Safety Code section 11370.2 enhancements upon the total aggregate sentence. The court shall prepare an amended abstract of judgment and modified minute order consistent with this opinion and forward copies to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed. O'Rourke, J.; We Concur: McIntyre, Acting, P.J., Irion, J.

D043761 In re Marriage of Peralta and Cardenas

The appeal is dismissed. McConnell, P.J.; We Concur: Huffman, J., Haller, J.

**D049437 Eddie W. v. Superior Court of San Diego County/San Diego County Health
and Human Services Agency**

The attorney for petitioner Eddie W. has notified the court that a petition for writ of mandate under California Rules of Court, Rule 38.1 and 1436.5 will not be filed. The case is dismissed.

D046580 People v. Threat

The judgment is affirmed. O'Rourke, J.; We Concur: McIntyre, Acting, P.J., Irion, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 30, 2006

D047180 People v. Herbert

The judgment of the trial court is affirmed. Aaron, J.; We Concur: McConnell, P.J., Huffman, J.

D048953 Rafael T. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petitions are denied. Nares, J.; We Concur: Huffman, Acting P.J., Aaron, J.

D048045 Walton v. County of San Diego

The judgment in favor of the County is affirmed. Parties to pay their own costs on appeal. Haller, J.; We Concur: Benke, Acting P.J., Nares, J.

D046530 People v. Berryman

The judgment is affirmed. McIntyre, J. We Concur: McDonald, Acting P.J., Irion, J.

D049652 People v. White

The appeal is dismissed.

D049400 People v. Edmonson

The notice of appeal and the September 6, 2006, minute order have been read and considered by Presiding Justice McConnell, and Associate Justices Haller and McDonald. An order granting deferred entry of judgment is not an appealable order. (People v. Mazurette (2001) 24 Cal.4th 789, 792-798). The appeal is dismissed.

D047421 Kozano v. Schlager

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately.

D049460 Swanson & Associates v. Superior Court of San Diego County/Geocon Incorporated

The petition in D049460 will be considered at the same time as the petition in D049448. For good cause shown, the superior court is ordered to show cause why the relief requested in the petition should not be granted. Absent objection on or before November 6, 2006 the informal response previously filed by Geocon, Incorporated, will be deemed the return to the order to show cause. Plaintiffs are invited to file a return on or before November 9, 2006, if they desire. The petitioner may file a reply on or before November 17, 2006. Absent a request on or before November 21, 2006, oral argument will be deemed waived. If a party requests oral argument, the request should be in letter form with proof of service on the other parties. The letter should also identify the focus of the party's argument and the amount of time requested, not to exceed 15 minutes.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 30, 2006 (Continued)

D049448 TSI Seismic Tenant Space, Inc. v. Superior Court of San Diego County/Geocon Incorporated

The petition in D049448 will be considered at the same time as the petition in D049460. For good cause shown, the superior court is ordered to show cause why the relief requested in the petition should not be granted. Absent objection on or before November 6, 2006 the informal response previously filed by Geocon, Incorporated, will be deemed the return to the order to show cause. Plaintiffs are invited to file a return on or before November 9, 2006, if they desire. The petitioner may file a reply on or before November 17, 2006. Absent a request on or before November 21, 2006, oral argument will be deemed waived. If a party requests oral argument, the request should be in letter form with proof of service on the other parties. The letter should also identify the focus of the party's argument and the amount of time requested, not to exceed 15 minutes.

The stay issued on September 7, 2006, remains in effect.

D048963 In re Natural Gas Anti-Trust Cases I, II, III & IV

The Superior Court of San Diego County is ordered to show cause why the relief requested should not be granted. Absent a written objection on or before November 13, 2006, the response of real parties in interest and petitioner's reply will be deemed the return and reply to the order to show cause.

Absent a written request on or before November 20, 2006, oral argument will be deemed waived. If a party request oral argument, the request should be in letter form with proof of service on the other parties. The letter should also identify the focus of the party's argument and the amount of time requested, not to exceed 15 minutes.

D049627 Corona v. Superior Court of San Diego County/The People

The petition is denied.

D049669 7-Eleven Inc., et al. v. Jerry Jolly/Alcoholic Beverage Control Appeals Board.

The petition is denied.

D049622 In re Lopez on Habeas Corpus

The petition is denied as the issue raised in the petition can be raised on appeal.

D048511 In re Thomas on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 31, 2006

D046224 Berkes as Trustee etc. et al. v San Diego Foreclosure Services Inc., et al.
D047346 Previti as Trustee etc. v. Berkes et al.
(Consolidated) The petition for rehearing is denied.

D048636 In re Aiden R., a Juvenile
The order is affirmed. McDonald, J.; We Concur: Haller, Acting P.J., Irion, J.

D047179 People v. Berthey
The judgment is affirmed. McConnell, P.J.; We Concur: Huffman, J., Aaron, J.

D048298 People v. Gooden
The judgment is affirmed. McDonald, J.; We Concur: McConnell, P.J., Nares, J.

D046669 People v. Badena
D048552 In re Badena on Habeas Corpus
The pending petition for writ of habeas corpus, In re Badena, D048552, is consolidated with the pending appeal, People v. Noe Aguayo Badena, D046669, for disposition.

D046669 People v. Badena
D048552 In re Badena on Habeas Corpus
The judgment is affirmed. The petition is denied. Nares, Acting P.J.; We Concur: McIntyre, J., Irion, J.

D049665 People v. Holman
The judgment is affirmed. Aaron, J.; We Concur: Benke, Acting P.J., Irion, J.